

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Baugh Analyst: Colin Stevens Bill Number: AB 2311

Related Bills: See prior analyses Telephone: 845-3036 Amended Date: 6/23/98

Attorney: Doug Bramhall

Sponsor:

SUBJECT: Small Business Smog Check Station Dynamometer and Equipment and additional enhancements Credits

- ☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended APRIL 30, 1998.
- ☐ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- ☐ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- ☐ FURTHER AMENDMENTS NECESSARY.
- ☐ DEPARTMENT POSITION CHANGED TO _____.
- ☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED APRIL 30, 1998 STILL APPLIES.
- ☐ OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow two credits to taxpayers that own and operate a smog check station which is a small business:

(1) a credit equal to the cost, less certain amounts, for the purchase or lease of a dynamometer and related equipment necessary to comply with Smog Check II regulations. A maximum \$50,000 credit would be allowed for each dynamometer to a smog check station that is a small business. The credit would be available only if a policy, regulation, statute, initiative, or executive order is adopted prior to January 1, 2005, which reduces the number of vehicles subject to testing by 25% or more and the smog check station thereafter ceases performing smog checks; and

(2) a credit for additional enhancements in excess of \$5,000 over the life of the equipment which are required by state policy, regulation, statute, initiative, or executive order.

SUMMARY OF AMENDMENT

The June 23, 1998, amendments would:

- Limit the allowance of the credit for the purchase or lease of a dynamometer and related equipment to the taxpayer that is treated as the "tax owner" of the equipment at the time the finding necessary for this bill's provisions to become operative is made by the State Air Resources Board (CARB).
- Clarify that the "service contract purchased but not used" would be the unexpired portion of any contract that has been pre-paid.

Board Position:

☐ S ☐ NA ☒ NP
☐ SA ☐ O ☐ NAR
☐ N ☐ OUA ☐ PENDING

Department/Legislative Director

Date

Johnnie Lou Rosas

7/24/98

- Clarify that all deductions allowed, up to and including those in the year the credit becomes operative, would be subtracted from the allowable credit amount.
- Provide a separate credit for additional enhancements made to dynamometers and related equipment as a result of any state requirements, including initiatives, statutes or executive orders. The credit would be equal to 100% of any costs in excess of \$5,000 per dynamometer over the life of the equipment and would have different operative dates than the credit for the purchase or lease of a dynamometer.
- Require that taxpayers claiming either credit provide documentation to the FTB upon request, specify the types of documentation required, and disallow the credit if documentation is not provided.
- Require that any finding by CARB be transmitted to the FTB on or before August 31st of the year the finding is made in order for the credit for the purchase or lease of a dynamometer to become effective in that year.
- Clarify that the credit for dynamometers and related equipment would be claimed in the year CARB makes the findings necessary for the bill to become operative, while the credit for additional enhancements would be claimed in those years after the taxpayer has made more than \$5,000 in required enhancements; and
- Make technical amendments discussed in the department's analysis of the bill as amended April 30, 1998.

These changes resolve two policy and several implementation and technical concerns raised in the previous analysis. However, three technical are raised by these amendments. The remainder of the department's analysis of the bill as amended April 30, 1998, still applies. The policy consideration that still applies is reiterated below for convenience.

EFFECTIVE DATE

As a tax levy, this bill would take effect when enacted. However, the credit for the purchase of a dynamometer would not become operative unless and until the State Air Resources Board (CARB) makes certain findings discussed in this analysis and notifies the Franchise Tax Board of those findings. This credit potentially would last be available for the 2004 year. The credit for additional enhancements required by state regulations would apply to taxable or income years beginning on or after January 1, 1998, and before January 1, 2005.

Policy Considerations

Fundamentally this bill authorizes a credit only if a future event of uncertain likelihood occurs, i.e. a reduction in the number of vehicles required to receive a smog certificate under Smog Check II. Also, the credit is allowed only if the taxpayer no longer issues smog certificates, so this credit may only be claimed by taxpayers who go out of this business, presumably because of the reduction in the state's smog certification requirements.

Implementation Considerations

Implementing this bill would not significantly impact the department's programs and operations.

Technical Consideration

The provision requiring that CARB notify the FTB of any finding by August 31st of the year a finding is made could mean that the credit never becomes operative if the finding is made after that date. The author's office requested Amendment 12 to clarify that the credit would become operative for the year following the year the finding is made if the finding is made after August 31st.

The credit for additional enhancements would require that a taxpayer pay more than \$5,000 for additional enhancements in a year while the intent, according to the author's office, is that a taxpayer receive a credit once he or she has paid more than \$5,000 over the life of the equipment. Amendments 2, 3, 4, 7, 8 and 9 would correct a drafting error to ensure that the credit for additional enhancements is allowed after a taxpayer has paid over \$5,000 over the life of a dynamometer for additional enhancements required by the State of California.

Language in the credit for additional enhancements is inconsistent since most of the credit refers to a "dynamometer and related equipment" while one portion refers merely to "equipment." Amendments 1 and 5 would make consistent use of the term "dynamometer and related equipment."

Current law for S corporations provides that the corporation receives one-third of any credit normally allowable. Shareholders of the S corporation receive a pro rata share of any credit. Amendment 6, 10 and 11 are provided for consistent treatment of this and other tax credits.

Board Position

At its March 26, 1998, meeting the Franchise Tax Board considered this bill but took no position. Julie Bornstein, on behalf of Controller Kathleen Connell, was neutral, Member Dean Andal was in support, and Robin J. Dezember, on behalf of Member Craig L. Brown, abstained.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2311
As Amended June 23, 1998

AMENDMENT 1

On page 4, line 13, after "and" insert:

related

AMENDMENT 2

On page 5, amend lines 25-27 as follows:

defined in Section 17039) an amount equal to the qualified costs ~~cost~~ paid or incurred in ~~excess of the base amount for the taxable year~~, by a taxpayer that owns or operates a smog

AMENDMENT 3

On page 6, after line 12, insert:

(2) "Qualified costs" shall be equal to the portion of any costs paid or incurred in the taxable year which, when added to costs paid or incurred in prior taxable years, beginning on or after January 1, 1998, are in excess of the base amount.

AMENDMENT 4

On page 6, amend line 13-15 as follows:

(2) (3) "Base amount ~~for the taxable year~~" shall be equal to \$5,000 plus any costs paid or incurred in prior taxable years beginning on or after January 1, 1998, for which a credit was allowed under this section.

AMENDMENT 5

On page 8, line 9, after "and" insert:

related

AMENDMENT 6

On page 9, strikeout lines 4 to 7, in line 9 strikeout "(g)" and insert:

(f)

AMENDMENT 7

On page 9, amend lines 26-28 as follows:

in Section 23036) an amount equal to the qualified costs ~~cost~~ paid or incurred in ~~excess of the base amount for~~ the taxable year, by a taxpayer that owns or operates a smog check station

AMENDMENT 8

On page 10, after line 12, insert:

(2) "Qualified costs" shall be equal to the portion of any costs paid or incurred in the income year which, when added to costs paid or incurred in prior income years, beginning on or after January 1, 1998, are in excess of the base amount.

AMENDMENT 9

On page 10, amend line 13-15 as follows:

(2) (3) "Base amount ~~for the income year~~" shall be equal to \$5,000 plus any costs paid or incurred in prior income years beginning on or after January 1, 1998, for which a credit was allowed under this section.

AMENDMENT 10

On page 10, ~~strikeout~~ lines 25 to 28, in line 29 ~~strikeout~~ "(f)" and insert:

(e)

AMENDMENT 11

On page 11, line 3, ~~strikeout~~ "(g)" and insert:

(f)

AMENDMENT 12

On page 11, line 29, after "made" insert:

, except that if a finding is transmitted to the Franchise Tax Board between September 1 and December 31, that finding shall not be treated as having been made for purposes of this act until the following January 1.